Supreme Court, U.S.
FILED
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ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-934

JOHN DUBELKO,
Petitioner,

vs.

JEAN DUBELKO,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio.

ROBERT E. SWEENEY,
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TABLE OF AUTHORITIES.

Constitution of the United States, Amendment XIV, Section 1	2, 3
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No. _____.

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PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio.

Petitioner prays that a writ of certiorari issue to review the Judgment of the Supreme Court of Ohio entered in the above captioned case December 17, 1971.

OPINIONS BELOW.

No opinions were rendered by either the trial or reviewing courts. The final orders of the Court of Common Pleas and the Court of Appeals of Cuyahoga County, Ohio, and of the Supreme Court of Ohio are set forth in the appendix hereto.

JURISDICTION.

The judgment of the Supreme Court which petitioner seeks to have this Court review was entered December 17, 1971, Jurisdiction to review this judgment by writ of certiorari is conferred on this Court by Title 28, United States Code, Section 1257 (3).

Petitioner in the Courts below was denied his Constitutional right by condoning, approving and affirming a Forgery of the Court Order without permission, consent or knowledge of the Trial Judge, in violation of Revised Code of Ohio 2913.06 and Article I-16—Constitution of Ohio.

QUESTION PRESENTED.

Is it legal for an Attorney at Law to write a personal Paragraph into a Court Order (Judgment Entry) conferring an unjust enrichment for his client valued at several thousand dollars without the knowledge, consent, or approval of the Trial Judge?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED.

Amendment XIV, Section 1 of the United States Constitution:

". . . nor shall any state deprive any person, of life, liberty or *property*, without due process of Law."

Constitution of Ohio, Article I, Section 16:

"Section 16. Redress in courts.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

Ohio Revised Code, Section 2913.06:

"2913.06. Altering Public Documents.

No person shall maliciously alter, deface, mutilate, destroy, abstract, or conceal the whole or part of a records, authorized to be made by law, or pertaining to a court, Justice of the Peace, or a State, County, Township, or Municipal office or officer. Whoever violates this shall be fined not more than three hundred dollars or imprisoned not more than three months, or both."

STATEMENT OF THE CASE.

This is a contested divorce case wherein the trial court found for the plaintiff wife, making certain awards as set forth in its decision of October 6, 1970, appended hereto. This decision further directed counsel for plaintiff to prepare a judgment entry in accordance with its decision. Thereafter plaintiff's counsel prepared an entry in which he incorporated an additional paragraph, enlarging upon the trial court's award, which entry was signed by the trial court and affirmed on appeal to the Court of Appeals of Cuyahoga County, Ohio and by the Supreme Court of Ohio in its entry denying a motion to certify by that court.

Petitioner contends that this insertion of a paragraph in the trial court's entry amounts to forgery under Ohio Revised Code Section 2913.06, and that the affirmance thereof constitutes a deprivation of property without due process, in violation of the Fourteenth Amendment of the Constitution of the United States and of Article I, Section 16 of the Constitution of Ohio.

ARGUMENT.

Forgery of a Judgment Entry in the Court of Common Pleas cannot be condoned nor approved by overruling in the Supreme Court of Ohio of a Motion to Certify.

Forgery—R.C. 2913.06. Altering Public Documents.

> "No person shall maliciously alter, deface, mutilate, destroy, abstract, or conceal the whole or part of a record, authorized to be made by law, or pertaining to a court, Justice of the Peace, or a State, County, Township, or Municipal office or officer. Whoever violates this shall be fined not more than three hundred dollars or imprisoned not more than three months, or both."

Former Counsel for the Respondent, since removed, apparently not satisfied with the generosity of the Judge of the Court of Common Pleas, without his knowledge, consent, permission or approval, had the effrontery to write a personal paragraph in the judgment Entry, the following unjust enrichment:

> "11. It is further ordered, adjudged, and decreed that the Plaintiff shall have as for alimony, all the furniture and household goods, save and except the personal belongings of the Defendant."

Copies of Court Order and Forgery alteration in Appendix.

That additional entry would include the entire furnishings of their modern home. Drapes, rugs, carpeting, pictures, lamps, all electrical appliances, musical instruments, a piano and accordion which were purchased by Petitioner for the inspiration, information, education and recreation for his children, also a colored television set, all contents would be valued at several thousand dollars.

Strange to say, our Honorable Supreme Court of Ohio make no mention of the Forgery, although it was brought to their attention by photostats and written argument. When the Forgery was brought to the attention of former Counsel he filed a Motion in our Court of Appeals to Strike Narrative Transcript of Testimony and Affirm Judgment. That Motion to Strike and Affirm Judgment was overruled by the Appellate Court January 14, 1971.

"As actions speak louder than words," the Malicious Act of former Counsel in this case to Alter a Court Order is not merely a violation of our Criminal Law but also a violation of perhaps the First Law Known to Man. Noe or Noah wrote into the Noachian Code his first law "We must have profound respect for Courts of Justice."

It also includes an Abuse of Discretion. For our Supreme Court of Ohio to Affirm the Act of Forgery is rather difficult to comprehend because it is part of a Court Order, separate and distinct from any claimed errors alleged to have been committed by the Trial Judge.

CONCLUSION.

We feel quite confident that our Petition for Certiorari will be allowed and granted by our Supreme Court of the United States so that Justice will be done by reversing the Judgment of Overruling our Motion to Certify in the Supreme Court of Ohio, or in the alternative the case should be remanded to the Court of Common Pleas for a rehearing. Otherwise the Petitioner will be penalized to the extent of several thousand dollars by the unethical conduct of an opposing attorney at law who possessed the effrontery to Alter The Court Order (Judgment Entry) who knew or should have known he deliberately committed Forgery.

Violation of Ohio Revised Code 2913.06 is a Crime, and conduct that should not be permitted to go unchallenged in the interest of Justice.

Respectfully submitted,

ROBERT E. SWEENEY,
A. F. GALLAGHER,
THOMAS, MAROLT, & CONWAY,
Counsel for Petitioner.

APPENDIX.

DECISION OF THE COURT OF COMMON PLEAS.

COURT OF COMMON PLEAS
County of Cuyahoga
Cleveland 13, Ohio

October 6, 1970

Mr. Stanley J. Zablotny
1228 Standard Building
Cleveland, Ohio 44113

Mr. A. F. Gallagher
Engineers Building
Cleveland, Ohio 44114

Re: Jean Dubelko v. John Dubelko
Case No. 853510

Gentlemen:

The Court finds as follows in the above entitled action:

1. Judgment for plaintiff; gross neglect.

2. Plaintiff is awarded custody subject to further order of Court.

3. Defendant ordered to pay $100.00 per week for child support plus medical and dental and hospitalization, subject to further order of Court.

4. Plaintiff awarded a two-thirds interest in the marital home and defendant is awarded one-third interest in the marital home; the Court orders the property sold and proceeds divided on the basis of one-third and two-thirds; and that plaintiff's attorney fees shall be deducted from defendant's share; provided further that the defendant shall pay to plaintiff as and for use and occupancy of her two-thirds interest the amount of $150.00 per month from July 1, 1970, until property is sold.

5. Judgment for plaintiff for $450.00 as and for arrearage.

6. Plaintiff awarded $1,000.00 as and for attorney fees.

7. Defendant awarded reasonable visitation.

8. Defendant to pay costs.

9. O. S. J. Exceptions reserved.

Counsel for plaintiff to prepare judgment entry and submit to opposing counsel.

Yours very truly,

/s/ JOHN L. MAXWELL,

Judge.

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS [AS PREPARED BY FORMER COUNSEL FOR PLAINTIFF-RESPONDENT].

No. 853,510.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO, COUNTY OF CUYAHOGA, SS.

JEAN DUBELKO,
Plaintiff,

vs.

JOHN DUBELKO,
Defendant.

1. This cause came on for hearing this day of , 1970 and was duly heard before the Honorable John L. Maxwell, upon the Complaint of plaintiff, the Answer of defendant and the evidence, the defendant being present in Court with his counsel.

2. Upon due consideration thereof, the Court finds that the plaintiff was a resident of the State of Ohio for more than one (1) year and a bona fide resident of Cuyahoga County for more than ninety (90) days, both immediately preceding the filing of the Complaint, that the parties were married as alleged and that six (6) children, James H., twenty (20) years, Jo Ann, age Nineteen (19) years, Michael, age eighteen (18) years, Robert, age sixteen (16) years, Ruthanne, age twelve (12) years and Rosanne, age five (5) years, were born as the issue of said marriage.

3. The Court further finds that the defendant has been guilty of Gross Neglect of Duty and that by reason thereof the plaintiff is entitled to a divorce as prayed for.

4. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the plaintiff be and she is hereby granted a divorce from the defendant and that the marriage contract heretofore existing between the parties be and is hereby dissolved and set aside.

5. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the care, custody and control of the minor children be and is hereby awarded to the plaintiff until further order of Court.

6. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that until further order of Court, the defendant pay to the plaintiff for the support of the minor children, the sum of One Hundred Dollars ($100.00) per week plus poundage, to the office of the County Clerk plus medical and dental and hospitalization expenses.

7. The Court further finds that the parties hereto own jointly the following described premises:

8. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff be and she is hereby awarded a two-thirds (⅔) interest in the above described marital home and the defendant is awarded a one-third (⅓) interest in said marital home; it is further ordered, adjudged and decreed, that the property be put up for sale immediately and the proceeds divided on the basis of one-third (⅓) to the husband and two-thirds (⅔) to the wife; it is further ordered that plaintiff's attorney fees shall be deducted from the defendant's share; it is further ordered, adjudged and decreed, that the defendant shall pay to the plaintiff as and for use and occupancy of her two-thirds (⅔) interest, the amount of One Hundred Fifty Dollars ($150.00) per month from July 1, 1970 until the property is sold.

9. The Court further finds that the defendant is in arrears in the amount of Four Hundred Fifty Dollars ($450.00) on the temporary alimony order heretofore made and judgment is hereby rendered in favor of the plaintiff and against the defendant in the amount of Four Hundred Fifty Dollars ($450).

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant pay to the plaintiff as additional alimony and expenses for her counsel fees, the sum of One Thousand Dollars ($1,000.00) which amount shall be deducted from the defendant's share of the proceeds arising from the sale of said real estate.

11. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff shall have as and for alimony, all of the furniture and household goods, save and except the personal belongings of the defendant. |Par. 11 added by former counsel for Plaintiff-Appellee, constituting forgery.|

12. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant shall have a reasonable right of visitation.

13. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant pay the costs of this proceeding for which judgment is rendered and execution may issue.

JOHN R. MAXWELL,
Judge.

APPROVED:

S. J. ZABLOTNY,
Attorney for Plaintiff.

Attorney for Defendant.

JOURNAL ENTRY OF THE COURT OF APPEALS.

(Entered October 5, 1971.)

IN THE COURT OF APPEALS

EIGHTH JUDICIAL DISTRICT OF OHIO,
CUYAHOGA COUNTY.

JEAN DUBELKO,
Plaintiff-Appellee,

vs.

JOHN DUBELKO,
Defendant-Appellant.

This cause came on to be heard upon the pleadings and the transcript of the evidence and the record in the Common Pleas Court, and was argued by counsel for the parties; and upon consideration, the court finds no error prejudicial to the appellant and therefore the judgment of the Common Pleas Court is affirmed. Each assignment of error was reviewed and upon review the following disposition made:

There were eleven (11) assignments of error specified in this case, all of which in essence attacked the decision of the trial court on the basis that the judgment was against the weight of the evidence.

Although a proposed narrative bill of proceedings was filed by defendant appellant to demonstrate assignments of error, the said bill was not signed by the attorney for the defendant nor signed or approved by the trial judge. There is, therefore, no valid transcript of proceedings before the court upon which a factual finding of error can be ascertained.

It is ordered that appellee recover of appellant her costs herein taxed.

The Court finds there was reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

JOHN M. MANOS,
Presiding Judge.

MANOS, *P. J.*
KRENZLER, *J.* and
JACKSON, *J.* Concur.

ORDER OF THE SUPREME COURT OF OHIO.

(Entered December 17, 1971.)

No. 71-725.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, CITY OF COLUMBUS.

JEAN DUBELKO,
Appellee,
VS.
JOHN DUBELKO,
Appellant.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR CUYAHOGA COUNTY TO CERTIFY ITS RECORD.

It is ordered by the Court that this motion is overruled.

NARRATIVE TRANSCRIPT OF DEFENDANT-APPELLANT.

COURT OF COMMON PLEAS

STATE OF OHIO, CUYAHOGA COUNTY.

NO OFFICIAL COURT REPORTER PRESENT AT LOWER COURT HEARING.

Since no official court reporter was present at the hearing of this case, Cuyahoga County Common Pleas Court, there is no official transcript available. Therefore, in the interest of justice, Defendant-Appellant presents to this honorable Court a narrative transcript of testimony.

NARRATIVE TRANSCRIPT OF TESTIMONY OF DEFENDANT-APPELLANT.

Plaintiff-Appellee in her Petition alleges two grounds for Divorce, namely, Extreme Cruelty and Gross Neglect of Duty. Yet, at the hearing on June 22, 1970 in Cuyahoga County Court of Common Pleas, Plaintiff-Appellee did not offer any testimony to support the first ground for Divorce; in the second alleged ground for Divorce, Plaintiff-Appellee testified to two very minor complaints as follows: "That the Defendant never gave her any money" and "he had forbidden her to purchase a rug for the living room."

On cross-examination, Plaintiff-Appellee admitted she received and controlled all the family finances for the first ten years of their married life; that they were constantly in debt; that she suggested the Defendant-Appellant handle the family funds, which he did in an admirable and successful manner, providing for the comfort and welfare of the family for the past eleven years.

Further, on cross-examination, Plaintiff-Appellee admitted there were due on their homestead a few remaining Mortgage payments to acquire a Warranty Deed for their dwelling valued at approximately Twenty-One Thou-

sand Dollars ($21,000.00); this was the reason Defendant-Appellant urged a delay for the purchase of the rug until the final Mortgage payment was made, a temporary and necessary delay in the best interests of the family.

Plaintiff-Appellee further admitted departing from her husband and their six children. "On or about March 10, 1968, she lived with her Father and Mother for a short period of time, and then, rented a suite of rooms in the Pleasant Lake Apartments where she lived alone for eight consecutive months." She left her six children, including a three-year old child, in the care, custody, and control of her husband, the Defendant-Appellant herein.

Further, Plaintiff-Appellee, on cross-examination, admitted she phoned the Defendant-Appellant on March 14, 1970, a Saturday evening at 10:15 P.M., to take her out as she "was in the mood for dancing and a little social life." The Defendant-Appellant most enthusiastically complied with her request; they went to the Cotton Tail Lounge where they spent the evening dancing. Plaintiff-Appellee displayed fond affection for her husband, embracing him and kissing him in public, a fact which prompted one person there to say, "Would anyone think you folks had a Divorce case pending by the affection you have for each other tonight?" Plaintiff-Appellee, however, denied her reply that "her husband was the best man she ever knew and that she had no grounds for Divorce."

Not to burden this Honorable Appellate Court further with domestic trivial matters, we reiterate with emphasis that the Plaintiff-Appellee did not present sufficient testimony in the lower Court hearing to substantiate the grounds for Divorce for which she petitioned.

SUPREME COURT, U.S.
FILED
MAR 4 1972
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-934.

JOHN DUBELKO,

Petitioner,

vs.

JEAN DUBELKO,

Respondent.

MOTION TO DISMISS PETITIONER'S PETITION FOR WRIT OF CERTIORARI AND APPEAL.

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In the Supreme Court of the United States

OCTOBER TERM, 1971.
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JOHN DUBELKO,
Petitioner,
vs.
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Respondent.

MOTION TO DISMISS PETITIONER'S PETITION FOR WRIT OF CERTIORARI AND APPEAL.

Now comes the Respondent, Jean Dubelko and by and through her Attorneys respectfully moves this Court to dismiss the appeal as filed by the Petitioner herein for the reason that said appeal does not present a federal question and further on the ground that said appeal is not within the jurisdiction of this Court and for the further reasons set forth in the Brief hereto attached and made a part of this Motion.

STATEMENT OF FACTS AND BRIEF.

The Respondent in this case filed a divorce action against the Petitioner in the Court of Common Pleas of Cuyahoga County, State of Ohio, praying for a divorce, support of minor children, temporary and permanent alimony, custody of minor children and division of property.

To this action, the Petitioner filed an Answer. The case came up for hearing in the aforesaid Common Pleas Court and the Trial Court granted a divorce to this Re-

spondent, made a division of property and granted her custody of said children together with support orders.

The Petitioner, the Defendant in the lower Court, filed a Notice of Appeal to the Court of Appeals of Cuyahoga County, State of Ohio and set forth therein eleven (11) assignments of error and upon hearing of said appeal, the said Reviewing Court overruled all eleven (11) assignments of error. Thereafter, the same Petitioner, the Defendant in the lower Court, filed a Notice of Appeal to the Supreme Court of Ohio, which was also overruled by said Court. Now the same Petitioner filed a Petition for Writ of Certiorari in the Supreme Court of the United States and which Petition is now before this Court.

We wish to call this Court's attention to the rules of the Supreme Court of the United States effective July 1, 1970, Rule 16-A and B thereof, part of which reads as follows:

> "16-A. The Court will receive a Motion to Dismiss any appeal on the ground that the appeal is not within the jurisdiction of this Court.
>
> 16-B. The Court will receive a Motion to Dismiss an appeal from a State Court on the ground that it does not present a substantial federal question; or that the federal question sought to be reviewed was not timely or properly raised or expressly passed on; or that judgment rests on an adequate non-federal basis."

The Respondent herein wishes to call this Court's attention to the fact that at no time did the Petitioner raise any federal question involving the Constitution in the lower Court and that said question is now raised in this Court for the first time.

Upon a careful perusal of the Brief as filed by the Petitioner this Honorable Court will note that the issues

raised in said Brief do not raise any Constitutional questions and that the said Petitioner by filing an appeal in all the State Courts did have due process of law and was never deprived of due process of law.

The Respondent herein does not wish to burden this Court with a long and tedious Brief in support of her Motion to Dismiss the appeal of the Petitioner herein, in that the facts are so elementary that this appeal should be dismissed as requested.

Respectfully submitted,

ROBERT I. SAMPLINER,
HYMAN J. BLUM,
Counsel for Respondent.

In the Supreme Court of the United States

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1971.

No. 71-934.

JOHN DUBELKO,

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vs.

JEAN DUBELKO,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

REPLY TO RESPONDENT'S MOTION TO DISMISS.

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OCTOBER TERM, 1971.

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

REPLY TO RESPONDENT'S MOTION TO DISMISS.

A cursory reading of Respondent's Motion to Dismiss Petitioner's Petition for Writ of Certiorari would reveal readily that Respondent does not deny the forgery perpetrated by her former counsel of the order of the trial judge in violation of the Ohio Code, R.C. 2913.06, "Altering Public Documents." Respondent treats and considers it one of the eleven errors, when in fact and law it is a separate, distinct court order.

This forged personal paragraph being No. 11 in the court order was argued in the Court of Appeals of Cuyahoga County, Ohio, in the presence of recently retained counsel and the Presiding Judge inquired if present counsel had any part of the forgery? His answer was "No, Your Honor," which is true, but the Court erred by merely con-

sidering the forgery an error, instead of a CRIME, and it is rather difficult to comprehend how the Court could condone the forgery.

Further, by Respondent's statement of facts she was given custody of her six minor children despite the fact that the Trial Judge heard her admit she deserted her husband and their six minor children, and lived in an apartment for eight consecutive months. In all probability, the Trial Judge did not consider it an Abuse of Discretion by granting custody.

Respondent further alleges that Petitioner by filing an appeal in all the State Courts "did have due process of law and was never deprived of due process of law." However, Petitioner reiterates with emphasis, condoning, approval, affirming the forgery of a court order does not constitute due process of law.

"Due Process of Law" as used in the Constitution, cannot mean less than a prosecution or suit instituted and conducted according to prescribed forms and solemnities for ascertaining guilt, and determining the title to property.

Black's Law Dictionary, page 401—Second Edition.

The guilt of the forgery of the order of the Trial Judge up to this moment has not been denied, nor any doubt of its authenticity. However, due process of law has been ignored by not applying the principle in a justifiable manner.

Numerous cases supporting the doctrine—omitted.

Consequently, in the interest of justice; we request the Motion of Respondent to Dismiss the Petitioner's Petition for a Writ of Certiorari be overruled.

Submitted respectfully,

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